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4/18/95
PATENT
Atty. Docket No. 0035.11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PAUL A. LUCIW *et al.*

RECEPTIONIST
RECEIVED

MAR 27 1995

Serial No.: 08/288,336

Group Art Unit: Unassigned **GROUP 1800**

Filed: August 10, 1994

Examiner: Unassigned

For: METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS
NUCLEIC ACID (AS AMENDED)

PETITION FOR CORRECTION OF INVENTORSHIP
PURSUANT TO 37 CFR §1.48(c)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This Petition is filed in order to timely correct the inventorship of the above-identified application under 37 CFR §1.48(c). The inventorship is incomplete due to an error made without deceptive intent. This Petition contains a Statement of Facts, the truth of which is verified by each of the original named inventors except Rob Hallewell. A Supplemental Petition for Correction of Inventorship Pursuant to 37 CFR §1.48(c) accompanies this paper and requests that the inventorship be corrected without Hallewell's signature, due to his refusal to cooperate with applicants. Accompanying the Petition is a Preliminary Amendment, including claims to the subject matter which was invented by the additional

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PAUL A. LUCIW *et al.*

Serial No.: 08/288,336

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Examiner: Unassigned

For: METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS
NUCLEIC ACID (AS AMENDED)

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MAR 27 1995

GROUP 1800

**DECLARATION IN SUPPORT OF PETITION FOR CORRECTION
OF INVENTORSHIP PURSUANT TO 37 CFR §1.48(c)**

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

1. We, Paul A. Luciw, Dino Dina, Kathelyn Steimer, Ray S. Pescador, Carlos George-Nascimento, Deborah Parkes, Rob Hallewell, Philip J. Barr and Martha Truett, are the originally named inventors of the parent of the above-captioned patent application, Serial No. 08/107,377 filed on August 17, 1993, which is a divisional of Serial No. 08/083,391, filed June 28, 1993, which is a continuation of Serial No. 07/931,191, filed August 17, 1992, which is a divisional of Serial No. 07/138,894, filed December 24, 1987, which is patented as U.S. Patent No. 5,156,949, which is a continuation-in-part of Serial No. 06/773,447, filed September 6, 1985, which is a continuation-in-part of Serial No. 06/696,534, filed January 30, 1985, which is a continuation-in-part of Serial No. 06/667,501, filed October 31, 1984.

2. We have read the Petition for Correction of Inventorship Pursuant to 37 CFR §1.48(c) ("Petition") and the Statement of Facts therein, attached to this declaration.

3. We verify to the best of our knowledge that the Statement of Facts contained in the Petition is true and accurate.

4. We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: x 12-19-94

x Paul A. Luciw
Paul A. Luciw

Date: _____

Dino Dina

Date: _____

Kathelyn Steimer

Date: _____

Ray S. Pescador

Date: _____

Carlos George-Nascimento

Date: _____

Deborah Parkes

PATENT
Atty. Docket No. 0035.11

Date: _____

Rob Hallewell

Date: _____

Philip J. Barr

Date: _____

Martha Truett

I hereby certify that this paper or fee is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, on _____.

(Signature)

(Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PAUL A. LUCIW *et al.*

Serial No.: 08/288,336

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Washington, D.C. 20231

Sir:

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signed by each of the added inventors. The Commissioner is hereby authorized to charge any additional fees or credit overpayment to Deposit Account No. 03-1664.

Statement of Facts

Information relating to the construction of certain plasmids for expression of heterologous proteins in mammalian cells have been disclosed in the above-captioned patent application and its parent applications ("HIV applications"), tracing back to a continuation-in-part ("CIP") application that was filed on December 24, 1987, Serial No. 07/138,894, now patented as U.S. Patent No. 5,156,949, issued on October 20, 1992. Such information includes, for example, the construction of plasmid pCMV6, and of its parents and derivatives.

However, at the time the CIP application was filed, the emphasis was on identification of DNA sequences obtainable from HIV and the products of expression of such sequences. The claims as originally filed, therefore, reflected such emphasis. The significance of the above-mentioned plasmids was overlooked.

On or about August, 1994, Amy L. Collins, a patent attorney employed by the assignee, Chiron Corporation, reviewed the HIV applications for the first time and discovered the unclaimed plasmids. Following her review, Dr. Collins investigated the significance of the plasmids and inventorship with respect to the plasmids and made the determination that claims to the plasmids should be added in a continuation application and the inventorship corrected to reflect the contribution of Steve Rosenberg, Barbara S. Chapman, Richard M. Thayer and Nancy L. Haigwood in designing and making the plasmids.

Relief Requested

Accordingly, the Commissioner is respectfully requested to amend the inventorship of the subject application to include Steve Rosenberg, Barbara S. Chapman, Richard M. Thayer

and Nancy L. Haigwood. Thus, acceptance of the accompanying documents is earnestly solicited.

Respectfully submitted,

By: _____
Roberta L. Robins
Registration No. 33,208

REED & ROBINS
635 Bryant Street
Palo Alto, California 94301
Telephone: (415) 617-8999
Fax: (415) 327-3231

**SUPPLEMENTAL COMBINED DECLARATION AND POWER OF ATTORNEY
FOR UTILITY PATENT APPLICATION**

AS A BELOW-NAMED INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS NUCLEIC ACID
(AS AMENDED) the specification of which**

(check one) ☐ is attached hereto
☒ was filed on August 10, 1994

as application serial no. 08/288,336 and amended by way of a Preliminary Amendment accompanying the filing of this document.

I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was

practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said application. This invention was not in public use or on sale in the United States of America more than one year prior to this application. This invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on any application filed by me or my legal representatives or assigns more than six months prior to this application.

I hereby appoint the following attorneys and agents to prosecute that application and to transact all business in the Patent and Trademark Office connected therewith and to file, to prosecute and to transact all business in connection with all patent applications directed to the invention:

Robert P. Blackburn, Reg. No. 30,447
Grant D. Green, Reg. No. 31,259
Barbara G. McClung, Reg. No. 33,113
Philip L. McGarrigle, Jr., Reg. No. 31,395
Kenneth M. Goldman, Reg. No. 34,174
Amy L. Collins, Reg. No. 33,370
Ling-Fong Chung, Reg. No. 36,482
Paul B. Savereide, Reg. No. 36,914
Paul B. Simboli, Reg. No. P-38,616.

Dianne E. Reed, Reg. No. 31,292
Roberta L. Robins, Reg. No. 33,208
Kenneth Barovsky, Reg. No. 36,442
Thomas P. McCracken, Reg. No. 38,548

Address all correspondence to: Amy L. Collins at

Chiron Corporation
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097

Address all telephone calls to: Amy L. Collins at (510) 601-2768

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature: *Steven Rosenberg*
Full Name of Inventor: Steven ROSENBERG
Citizenship: US
Residence: Oakland, CA 94602
Post Office Address: 2323 Bywood Drive, Oakland, CA 94602

Date *12/27/99*

Signature: _____
Full Name of Inventor: Barbara S. Chapman
Citizenship: US
Residence: Berkeley, CA 94701
Post Office Address: 1346 Cornell, Berkeley, CA 94701

Date _____

Signature: *Richard M. Thayer*
Full Name of Inventor: Richard M. THAYER
Citizenship: US
Residence: Alamo, CA 94507
Post Office Address: 112 Garydale Court, Alamo, CA 94507

Date *1/1/00*

Signature: _____
Full Name of Inventor: Nancy L. HAIGWOOD
Citizenship: US
Residence: Bellevue, WA 98004
Post Office Address: 4404 91st Avenue, N.E., Bellevue, WA 98004

Date _____

inventors; Consent of Assignee to Correction of Inventorship Under 37 CFR §1.48(c); the fee set forth in 37 CFR §1.17(h); and a Declaration and Power of Attorney, signed by each of the added inventors. The Commissioner is hereby authorized to charge any additional fees or credit overpayment to Deposit Account No. 18-0580.

Statement of Facts

Information relating to the construction of certain plasmids for expression of heterologous proteins in mammalian cells have been disclosed in the above-captioned patent application and its parent applications ("HIV applications"), tracing back to a continuation-in-part ("CIP") application that was filed on December 24, 1987, Serial No. 07/138,894, now patented as U.S. Patent No. 5,156,949, issued on October 20, 1992. Such information includes, for example, the construction of plasmid pCMV6, and of its parents and derivatives.

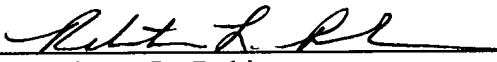
However, at the time the CIP application was filed, the emphasis was on identification of DNA sequences obtainable from HIV and the products of expression of such sequences. The claims as originally filed, therefore, reflected such emphasis. The significance of the above-mentioned plasmids was overlooked.

On or about August, 1994, Amy L. Collins, a patent attorney employed by the assignee, Chiron Corporation, reviewed the HIV applications for the first time and discovered the unclaimed plasmids. Following her review, Dr. Collins investigated the significance of the plasmids and inventorship with respect to the plasmids and made the determination that claims to the plasmids should be added in a continuation application and the inventorship corrected to reflect the contribution of Steve Rosenberg, Barbara S. Chapman, Richard M. Thayer and Nancy L. Haigwood in designing and making the plasmids.

Relief Requested

Accordingly, the Commissioner is respectfully requested to amend the inventorship of the subject application to include Steve Rosenberg, Barbara S. Chapman, Richard M. Thayer and Nancy L. Haigwood. Thus, acceptance of the accompanying documents is earnestly solicited.

Respectfully submitted,

By: 
Roberta L. Robins
Registration No. 33,208

REED & ROBINS
635 Bryant Street
Palo Alto, California 94301
Telephone: (415) 617-8999
Fax: (415) 327-3231

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PAUL A. LUCIW *et al.*

Serial No.: 08/288,336

Group Art Unit: Unassigned

Filed: August 10, 1994

Examiner: Unassigned

For: METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS
NUCLEIC ACID (AS AMENDED)

RECEIVED

AUG 7 1995

GROUP 1800

SUPPLEMENTAL PETITION FOR CORRECTION OF INVENTORSHIP
PURSUANT TO 37 CFR §1.48(c)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This Supplemental Petition for Correction of Inventorship Pursuant to 37 CFR §1.48(c) ("Supplemental Petition") is filed in order to supplement the Petition for Correction of Inventorship Pursuant to 37 CFR §1.148(c) ("Petition") which is included herewith and which was attached to each Declaration in Support of Petition for Correction of Inventorship Pursuant to 37 CFR §1.148(c) ("Declaration"), also being submitted herewith.

In particular, applicants by way of this Supplemental Petition request that the inventorship be corrected on this application without the signature of original named co-inventor Rob Hallewell. This is because inventor Hallewell has refused to cooperate, as discussed more fully below.

The Commissioner is hereby authorized to charge any additional fees which may be due based on the filing of this Supplemental Petition or to credit overpayment to Deposit Account No. 18-0580.

Statement of Facts

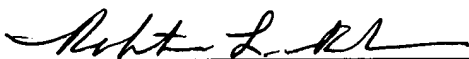
On or around December 12, 1994 through December 16, 1994, the undersigned attempted to contact all of the named inventors on the subject application, as well as the inventors to be added. The undersigned was successful in reaching or leaving messages for everyone except Rob Hallewell. On or around December 16, 1994, a letter was sent to Rob Hallewell at his current address in England, Biochemistry Department, Imperial College, Exhibition Road, London, England SW7 2AZ. The letter included the Declaration with an attached Petition. A copy of this letter is attached hereto as Exhibit A. The address to which the letter was sent is the address routinely used by Hallewell's previous employer, Chiron Corporation, when they correspond with him regarding other matters. On or about mid-January, the undersigned attempted to contact Rob Hallewell by telephone to check on the status to the Declaration but was unable to reach him or to leave a message. On or around January 30, 1995, the undersigned was informed by Amy L. Collins, a patent attorney at Chiron, that she had heard that Rob Hallewell had received the letter of December 16, 1994 but wanted a copy of the subject patent application to review. Accordingly, on or around January 30, 1995, the undersigned sent a reminder letter to Hallewell, along with a copy of the patent application. A copy of this letter is attached hereto as Exhibit B. On or around February 15, 1995, the undersigned was successful in reaching Rob Hallewell by telephone. He said he had not yet signed the Declaration because he was waiting to reach an agreement with Chiron Corporation concerning other unrelated matters. On or about March 15, March 16 and March 17, 1995, the undersigned again attempted to contact Rob Hallewell by telephone and was unsuccessful but left a message on the first occasion. On or about March 20, 1995, the undersigned spoke with Rob Hallewell

by telephone and Hallewell said that he would not sign the Declaration because he had not reached an agreement with Chiron Corporation.

Relief Requested

Accordingly, the Commissioner is respectfully requested to amend the inventorship of the subject application without Rob Hallewell's signature since, as explained above, Dr. Hallewell has refused to cooperate with applicants on this matter. Thus, acceptance of the accompanying documents is earnestly solicited.

Respectfully submitted,

By: 
Roberta L. Robins
Registration No. 33,208

REED & ROBINS
635 Bryant Street
Palo Alto, California 94301
Telephone: (415) 617-8999
Fax: (415) 327-3231

REED & ROBINS

ATTORNEYS AT LAW

DIANNE E. REED
ROBERTA L. ROBINS
KENNETH BAROVSKY
THOMAS P. MCCrackEN

635 BRYANT STREET
PALO ALTO, CA 94301
TELEPHONE (415) 617-8999
FACSIMILE (415) 327-3231

PATENT PREPARATION
AND PROSECUTION

16 December 1994

VIA FEDERAL EXPRESS

Dr. Robert A. Hallewell
Biochemistry Department
Imperial College
Exhibition Road
London, England SW7 2AZ

Re: U.S. Patent Application Serial No. 08/288,336
for METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY
VIRUS NUCLEIC ACID (as amended)
by Luciw et al.
Chiron Reference: 0035.11
Our Reference: 2300-0035.13

Dear Dr. Hallewell:

Chiron wishes to add claims directed to the pCMV6 plasmids to the above-identified application. In order to so, the inventorship must be amended to add the inventors who designed and made the plasmids. Thus, we require your signature on the accompanying Declaration in support of the petition to correct inventorship. Please sign and date the document on the appropriate signature line and return it to me by courier for filing at your earliest convenience.

Very truly yours,



Roberta L. Robins

RLR/gw
Enclosure

cc: Amy L. Collins, Ph.D.

REED & ROBINS

ATTORNEYS AT LAW

DIANNE E. REED
ROBERTA L. ROBINS
KENNETH BAROVSKY
THOMAS P. MCCrackEN

635 BRYANT STREET
PALO ALTO, CA 94301
TELEPHONE (415) 617-8999
FACSIMILE (415) 327-3231

PATENT PREPARATION
AND PROSECUTION

30 January 1995

VIA FEDERAL EXPRESS

Dr. Robert A. Hallewell
Biochemistry Department
Imperial College
Exhibition Road
London, England SW7 2AZ

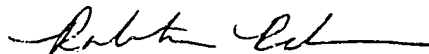
Re: U.S. Patent Application Serial No. 08/288,336
for METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY
VIRUS NUCLEIC ACID (as amended)
by Luciw et al.
Chiron Reference: 0035.11
Our Reference: 2300-0035.13

Dear Dr. Hallewell:

Further to our 16 December 1994 letter we are still awaiting your signature on the accompanying Declaration in support of the petition to correct inventorship. Please sign and date the document on the appropriate signature line and return it to me by courier for filing at your earliest convenience.

We are also enclosing a copy of the application as filed for your convenience.

Very truly yours,



Roberta L. Robins

RLR/gw
Enclosures

cc: Amy L. Collins, Ph.D.

PATENT
Atty. Docket No. 0035.011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

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Group Art Unit: Unassigned

GROUP 1800

Filed: August 10, 1994

Examiner: Unassigned

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CONSENT OF ASSIGNEE TO CORRECTION OF INVENTORSHIP
UNDER 37 CFR §1.48(c)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

Chiron Corporation, assignee of the entire title and interest of the above-referenced patent application, hereby consents to the correction of inventorship, adding as inventors Steven Rosenberg, Barbara S. Chapman, Richard M. Thayer and Nancy L. Haigwood. I am fully authorized to execute legal documents on behalf of Chiron Corporation.

Respectfully submitted,

Date: Feb. 9, 1995

By: Amy L. Collins
Amy L. Collins
Attorney for Applicants
Reg. No. 33,370

CHIRON CORPORATION
Intellectual Property - R440
P.O. Box 8097
Emeryville, California 94662-8097
(510) 601-2768
(510) 655-3542

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Date: _____

Paul A. Luciw

Date: Jan 6, 1995

x 
Dino Dina

Date: _____

x _____
Kathelyn Steimer

Date: _____

x _____
Ray S. Pescador

Date: _____

x _____
Carlos George-Nascimento

Date: _____

Deborah Parkes

PATENT
Atty. Docket No. 0035.11

Date: _____

Rob Hallewell

Date: _____

Philip J. Barr

Date: _____

Martha Truett

I hereby certify that this paper or fee is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, on _____.

(Signature)

(Date)

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Registration No. 33,208

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For: METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS
NUCLEIC ACID (AS AMENDED)

RECEIVED

MAR 27 1995

GROUP 1800

**DECLARATION IN SUPPORT OF PETITION FOR CORRECTION
OF INVENTORSHIP PURSUANT TO 37 CFR §1.48(c)**

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

1. We, Paul A. Luciw, Dino Dina, Kathelyn Steimer, Ray S. Pescador, Carlos George-Nascimento, Deborah Parkes, Rob Hallewell, Philip J. Barr and Martha Truett, are the originally named inventors of the parent of the above-captioned patent application, Serial No. 08/107,377 filed on August 17, 1993, which is a divisional of Serial No. 08/083,391, filed June 28, 1993, which is a continuation of Serial No. 07/931,191, filed August 17, 1992, which is a divisional of Serial No. 07/138,894, filed December 24, 1987, which is patented as U.S. Patent No. 5,156,949, which is a continuation-in-part of Serial No. 06/773,447, filed September 6, 1985, which is a continuation-in-part of Serial No. 06/696,534, filed January 30, 1985, which is a continuation-in-part of Serial No. 06/667,501, filed October 31, 1984.

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Date: _____

Paul A. Luciw

Date: _____

Dino Dina

Date: 12/29/94

Kathelyn Steimer

Date: _____

Ray S. Pescador

Date: _____

Carlos George-Nascimento

Date: _____

Deborah Parkes

PATENT
Atty. Docket No. 0035.11

Date: _____

Rob Hallewell

Date: _____

Philip J. Barr

Date: _____

Martha Truett

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(Signature)

(Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PAUL A. LUCIW *et al.*

Serial No.: 08/288,336

Group Art Unit: Unassigned

Filed: August 10, 1994

Examiner: Unassigned

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Respectfully submitted,

By: _____
Roberta L. Robins
Registration No. 33,208

REED & ROBINS
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Palo Alto, California 94301
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Date: _____

Paul A. Luciw

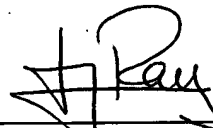
Date: _____

Dino Dina

Date: _____

Kathelyn Steimer

Date: 010495



Ray S. Pescador

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Carlos George-Nascimento

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Date: _____

Paul A. Luciw

Date: _____

Dino Dina

Date: _____

Kathelyn Steimer

Date: _____

Ray S. Pescador

Date: Dec 29, 1994

Carlos George Nascimento

Date: _____

Deborah Parkes

Date: _____

Rob Hallewell

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Philip J. Barr

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Martha Truett

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By: _____
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Registration No. 33,208

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1. We, Paul A. Luciw, Dino Dina, Kathelyn Steimer, Ray S. Pescador, Carlos George-Nascimento, Deborah Parkes, Rob Hallewell, Philip J. Barr and Martha Truett, are the originally named inventors of the parent of the above-captioned patent application, Serial No. 08/107,377 filed on August 17, 1993, which is a divisional of Serial No. 08/083,391, filed June 28, 1993, which is a continuation of Serial No. 07/931,191, filed August 17, 1992, which is a divisional of Serial No. 07/138,894, filed December 24, 1987, which is patented as U.S. Patent No. 5,156,949, which is a continuation-in-part of Serial No. 06/773,447, filed September 6, 1985, which is a continuation-in-part of Serial No. 06/696,534, filed January 30, 1985, which is a continuation-in-part of Serial No. 06/667,501, filed October 31, 1984.

2. We have read the Petition for Correction of Inventorship Pursuant to 37 CFR §1.48(c) ("Petition") and the Statement of Facts therein, attached to this declaration.

3. We verify to the best of our knowledge that the Statement of Facts contained in the Petition is true and accurate.

4. We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: _____

Paul A. Luciw

Date: _____

Dino Dina

Date: _____

Kathelyn Steimer

Date: _____

Ray S. Pescador

Date: _____

Carlos George-Nascimento

Date: _____

Deborah Parkes

Date: _____

Rob Hallewell

Date: _____

Philip J. Barr

Date: Dec 21, 1994

x Martha S. Truett
Martha Truett

I hereby certify that this paper or fee is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, on _____.

(Signature)

(Date)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

PAUL A. LUCIW *et al.*

Serial No.: 08/288,336

Group Art Unit: Unassigned

Filed: August 10, 1994

Examiner: Unassigned

For: METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS
NUCLEIC ACID (AS AMENDED)

PETITION FOR CORRECTION OF INVENTORSHIP
PURSUANT TO 37 CFR §1.48(c)

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This Petition is filed in order to timely correct the inventorship of the above-identified application under 37 CFR §1.48(c). The inventorship is incomplete due to an error made without deceptive intent. This Petition contains a Statement of Facts, the truth of which is verified by each of the original named inventors. Accompanying the Petition is a Preliminary Amendment, including claims to the subject matter which was invented by the additional inventors; Consent of Assignee to Correction of Inventorship Under 37 CFR §1.48(c); the fee set forth in 37 CFR §1.17(h); and a Declaration and Power of Attorney,

signed by each of the added inventors. The Commissioner is hereby authorized to charge any additional fees or credit overpayment to Deposit Account No. 03-1664.

Statement of Facts

Information relating to the construction of certain plasmids for expression of heterologous proteins in mammalian cells have been disclosed in the above-captioned patent application and its parent applications ("HIV applications"), tracing back to a continuation-in-part ("CIP") application that was filed on December 24, 1987, Serial No. 07/138,894, now patented as U.S. Patent No. 5,156,949, issued on October 20, 1992. Such information includes, for example, the construction of plasmid pCMV6, and of its parents and derivatives.

However, at the time the CIP application was filed, the emphasis was on identification of DNA sequences obtainable from HIV and the products of expression of such sequences. The claims as originally filed, therefore, reflected such emphasis. The significance of the above-mentioned plasmids was overlooked.

On or about August, 1994, Amy L. Collins, a patent attorney employed by the assignee, Chiron Corporation, reviewed the HIV applications for the first time and discovered the unclaimed plasmids. Following her review, Dr. Collins investigated the significance of the plasmids and inventorship with respect to the plasmids and made the determination that claims to the plasmids should be added in a continuation application and the inventorship corrected to reflect the contribution of Steve Rosenberg, Barbara S. Chapman, Richard M. Thayer and Nancy L. Haigwood in designing and making the plasmids.

Relief Requested

Accordingly, the Commissioner is respectfully requested to amend the inventorship of the subject application to include Steve Rosenberg, Barbara S. Chapman, Richard M. Thayer

and Nancy L. Haigwood. Thus, acceptance of the accompanying documents is earnestly solicited.

Respectfully submitted,

By: _____
Roberta L. Robins
Registration No. 33,208

REED & ROBINS
635 Bryant Street
Palo Alto, California 94301
Telephone: (415) 617-8999
Fax: (415) 327-3231

SUPPLEMENTAL COMBINED DECLARATION AND POWER OF ATTORNEY
FOR UTILITY PATENT APPLICATION

AS A BELOW-NAMED INVENTOR, I HEREBY DECLARE THAT:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if more than one name is listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

METHODS FOR DETECTING HUMAN IMMUNODEFICIENCY VIRUS NUCLEIC ACID
(AS AMENDED) the specification of which

(check one) ☐ is attached hereto
☒ was filed on August 10, 1994

as application serial no. 08/288,336 and amended by way of a Preliminary Amendment accompanying the filing of this document.

I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

I acknowledge and understand that I am an individual who has a duty to disclose information which is material to the patentability of the claims of this application in accordance with Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was

practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

I do not know and do not believe this invention was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to said application. This invention was not in public use or on sale in the United States of America more than one year prior to this application. This invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on any application filed by me or my legal representatives or assigns more than six months prior to this application.

I hereby appoint the following attorneys and agents to prosecute that application and to transact all business in the Patent and Trademark Office connected therewith and to file, to prosecute and to transact all business in connection with all patent applications directed to the invention:

Robert P. Blackburn, Reg. No. 30,447
Grant D. Green, Reg. No. 31,259
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Intellectual Property - R440
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Signature: _____
Full Name of Inventor: Steven ROSENBERG
Citizenship: US
Residence: Oakland, CA 94602
Post Office Address: 2323 Bywood Drive, Oakland, CA 94602

Date _____

Signature: x Barbara S. Chapman
Full Name of Inventor: Barbara S. Chapman
Citizenship: US
Residence: Berkeley, CA 94702
Post Office Address: 1346 Cornell, Berkeley, CA 94702

Date x 2/13/95

Signature: _____
Full Name of Inventor: Richard M. THAYER
Citizenship: US
Residence: Alamo, CA 94507
Post Office Address: 112 Garydale Court, Alamo, CA 94507

Date _____

Signature: _____
Full Name of Inventor: Nancy L. HAIGWOOD
Citizenship: US
Residence: Bellevue, WA 98004
Post Office Address: 4404 91st Avenue, N.E., Bellevue, WA 98004

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Date X

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Residence: Berkeley, CA 94701
Post Office Address: 1346 Cornell, Berkeley, CA 94701

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Signature: *Richard M Thayer*
Full Name of Inventor: Richard M. THAYER
Citizenship: US
Residence: Alamo, CA 94507
Post Office Address: 112 Garydale Court, Alamo, CA 94507

Date *12/29/94*

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Citizenship: US
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Signature: Nancy L. Haigwood

Date 1-1-95

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